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No. 394

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

LOCKE MILLER,
Petitioner,

vs.

HENRY P. KOSLING,
Respondent.

PETITION FOR WRIT OF CERTIORARI

JENKINS, SCHUESSLER,
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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

May it please the Court,

The petitioner Locke Miller, a citizen and resident of the United States and of the State of Ohio, respectfully prays the Court for a Writ of Certiorari herein to review and reverse the action and final order and judgment of the Supreme Court of Ohio herein, which heard and determined the matter herein **wholly without jurisdiction to hear same,** inasmuch as said Su-

preme Court has only appellate jurisdiction of the subject matter, the original jurisdiction of which, under Section 4785 - 166 General Code of Ohio, is placed in the Chief Justice alone, or a single member of the Court appointed by him; but said Supreme Court is the Highest Court of the State in which a decision could be had; and petitioner prays he may be restored to all things which he has lost by the said denial of Due Process.

Petitioner says the number of said cause in said Court was 32275; which final order and judgment was rendered and entered upon August 23, 1950; and that said final order and judgment is the reported case, 154 Ohio St. 207, as cases are customarily reported in the said Supreme Court of Ohio. And said reported case is submitted herewith and is petitioner's exhibit .....

Petitioner herein was one of the Contestors therein; and therein petitioner claims the Republican Nomination for Congress for the 19th Congressional District of Ohio.

A transcript of the Docket and Journal Entries in said cause and a certified copy of the Record thereof are filed herewith.

A: SUMMARY STATEMENT OF THE MATTER INVOLVED

Gang politics, that breeding ground of organized crime and organized national racketeering, has reached the proportions in Ohio to require Federal process. Our case is that machine politics has so subdued the Courts of Ohio, that only the Federal power can cope with it.

The Board of Elections of Mahoning County, crucial nucleus of the bi-partisan political machine of the 19th Congressional District, following the policy of self-perpetuation by packing the party committees with illegal, controllable members,—on the 5th day of January, 1950, entered into a conspiracy with one, Henry P. Kosling, Respondent herein, a Youngstown resident, to sign, and he did sign, a Declaration of Candidacy for Precinct Committeeman in **Canfield,** Precinct No. 2, although he was then and there registered in Precinct N, 5th Ward, City of **Youngstown, where he resided.** This young man had been recently admitted to the Bar, and, as a lawyer, knew the meaning of the false affidavit he signed on that date, under the circumstances that the Ohio law and the legislature striving for legislative conditions (quoting subsection 34) "to prevent fraud in elections," requires (subsection 71) not only a very exacting oath of the candidate as to residence; but as well, the oath of 5 additional electors to the same, all residents of the said precinct.

No one having observed his fraud, and the then Republican Chairman, considering this falsifier of affidavits would be a likely marionette in the sham battle in the November election for the seat of the 19th Congressional District, a likely Mortimer Snerd in the tragic horse-play of surrendering the Republican Party and its traditions to the incumbent bi-partisan machine and its Charley McCarthy Congressman,—the said H. P. Kosling, on the 18th day of January, 1950, made a Declaration of Candidacy for the office of Representative to Congress, repeating **the original false affidavit** of residence in the said Canfield Precinct, while he was then and there, the whole time, residing and registered in Precinct N, 5th Ward, **City of**

Youngstown. The then Republican Chairman, Clerk of the said Board, circulated his congressional petition. The said H. P. Kosling circulated and notarized his own precinct committeeman petition, in violation of the law of Ohio.

Not until January 25 did the conspirators make even paper pretense of registering the said candidate in the Canfield precinct; but on the said date, they made their 3rd false affidavit, in violation of criminal subsection 201 of the Election Act, entitled False Registration, by criminally registering the said Kosling in the said Canfield Precinct; all the while, he was living in Precinct N, 5th Ward, City of Youngstown. He was building a house in Canfield, but the Court found, (R Case No. 32259, Supreme Court of Ohio, Page 3 Interrogations, No. 10) that he never lived in it. The house under construction was never habitable. The court found, (Appellate Opinion, page 4) said Kosling's affidavits to be false. Foregoing records subpoenaed herein. See Contestee's Answer herein for admission of all said salient facts; petitioner's exhibit .....

Now, the Constitution of Ohio provides, Article V, Section 1, (set out page 31, Appendix) as to who is qualified to vote, that citizens of the United States, who have resided in the State one year, and in the various political subdivisions **the length of time required by law,** shall be qualified electors. Pursuant to this constitutional provision, the legislature has enacted subsection 30 of the Election Act, requiring **40 days residence in the precinct** to vote therein. And subsection 34 provides, not only the necessity of registration in such districts as the Youngstown Metropolitan area, but adds,

> **"No person** may vote at any election . . . **or sign any declaration of candidacy** or . . . **nominating petition unless he is duly registered in the manner provided"** in the Election Act.

It is obvious therefore, that H. P. Kosling, by his various false affidavits, including his **criminal registration in Canfield,** being off the poll book where he resides, has got himself where **he is not a qualified elector.**

Now comes the Constitution of the United States, and provides, Article 1, Section 2 (set out page 31 Appendix), that a member of Congress must be a qualified elector in his own State, indeed must have the qualifications of a member of "the most numerous branch of the State Legislature."

Immediately, therefore, is posed the Federal question; and is made apparent the flouting of the Constitutional requirements by the Ohio court. See division B, Statement of Grounds of Jurisdiction, Seq.

When, on or about the 10th day of February, the petitioners herein filed their protests with the Board of Elections, and under subsection 72 of the said Election Act, a hearing was called, and petitioners filed a praecipe for witnesses and duces tecum for documents, especially for the registration cards and poll books exposing the foregoing frauds, the Board of Elections, ignored the subpoenas, refused the duces tecum, and concealed the said registration cards and poll books.

The whole Canfield incident is an excellent and customary example of the technique of machine politics, for the machine was following the first law of corrupt politics, self-perpetuation; and the machine wanted one of the protestants, James Thomas's scalp,

who was not a servile tool of the machine, and had been many years committeeman in Canfield. The machine was at a loss for any resident candidate willing or able to oppose him; and chose the affidavit falsifier for the willing tool.

Petitioners going to court to enforce the production of the evidence, the courts, creatures of corrupt politics and the machine, in the face of said evidence, have as flagrantly disregarded the law and the Constitution of Ohio and of the United States, and have exercised as gross an abuse of discretion, amounting to fraud, as did the defendants. Indeed, from the Common Pleas Court of Mahoning County to the Supreme Court, all the Courts, with corruption equal to the said Board, chose the evil master, corrupt politics, rather than to uphold their oath to support the Constitution and the law. Judges elected by gang politics, so obnoxious in Ohio, with its graft and tribute levied not only on legal liquor licensees, but of course on all speak-easies, gambling joints, houses of prostitution and the like,—served their master, gang politics, which has fore-armed itself, as the record in this case shows, by the most corrupt control of the courts known to history. These courts flagrantly and corruptly made a sacred cow of the political conspiracy. And said courts have fulfilled in very truth that definition by Webster, written by Roscoe Pound, in which, in the last edition, Webster defines kangaroo court to be,

> "An irresponsible, unauthorized, or irregular tribunal, or one in which, **although conducted under some authorization, the principles of law and justice are disregarded or perverted.**"

Despite innumerable perjuries by Board under cross-examination upon being confronted by the rec-

ords, which speak for themselves, and a conspiracy of concealment of evidence, and standing mute with refusal to answer a total of 27 pertinent and relevant questions by one member, and evading of subpoenas by another, petitioners could get no relief for such fraud in the Courts of Ohio. **These illegalities and frauds amount to a total failure of Due Process.**

B: STATEMENT OF GROUNDS OF JURISDICTION

The grounds upon which the jurisdiction of the Supreme Court of the United States attaches in the above entitled action are:

1. The Constitution of the United States (Article 1, Section 2) provides as to the qualifications of a member of Congress,—

A. In general, that a member of the National House of Representatives must be an elector, and presumably since under the development of registration laws requiring to be an elector **in a particular place,** must be an elector in a particular place **as provided in the laws of said elector's own State.**

B. And particularly, since the Constitution of the United States provides that a member of the National House of Representatives "shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature," the query shifts directly to the qualifications prescribed in the Constitution and laws of Ohio for membership in "the most numerous branch of the State Legislature" of Ohio.

(I) The Constitution of Ohio provides (Article XV, Section 4) entitled **Who eligible to hold office,** that all public officials in Ohio must be qualified electors.

Article XV, Section 4. **Who eligible to hold office.** "No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector; ....."

(II) The Constitution of Ohio provides furthermore, as to elections (Article V, Section 1) entitled **Who may vote,** that citizens of the United States, who have resided in the State one year next preceding the election in contemplation, **and in the various political subdivisions** "such time as may be provided by law," shall have the qualifications of electors.

"Such time as may be provided by law." — Section 4785 - 30 of the General Code of Ohio, a part of the Registration Law of Ohio, **requires 40 days residence in the particular precinct** in which the voter has his residence and claims voting rights. Of course, the requirement is that his voting right must be exercised in the precinct of his residence. Section 4785 - 34 provides the necessity of registration in all cities of 16,000 population or more, and in addition, the necessity of registration in territories adjacent to such metropolitan centers as Youngstown. Both Canfield and Youngstown are registration territory. Said subsection - 34 closes with this conclusive provision:

"No person . . . shall be entitled to vote at any election, **or to sign any declaration of candidacy,** or **nominating . . . petition, unless he is duly registered as an elector in the manner provided"** in the Election Act.

The complete sections 4785 - 30 and 4785 - 34 are as follows:

Section 4785 - 30. **Residence qualifications of voters; assignment of electors in special school**

elections. No person shall be permitted to vote at any election unless he shall have been a resident of the state one year, of the county forty days and of the voting precinct forty days next preceding the election at which he offers to vote, provided that any qualified elector who in good faith moves his residence from one precinct to another precinct in the same county at any time subsequent to the fortieth day preceding an election shall have the right to vote at such election in the precinct from which he moved wherein his voting residence had been legally established, and, provided further, that when only a portion of a precinct is included within the boundaries of a school district the board of elections may assign the electors residing in such portion of a precinct to the nearest precinct totally included within the boundaries of such school district for the purpose of voting at any special school election held in such school district. The board of elections shall notify all such electors so assigned, at least ten days prior to the holding of any such special school election, of the location of the polling place where they are entitled to vote at such special school election.

Section 4785 - 34. **Registration required; board may extend to non-registration territory.** In every city which at the last preceding federal census had, or which at any local, state, or federal census provided by law, shall have reached a population of sixteen thousand (16,000) or more, the board of elections shall establish and maintain, in the manner herein provided, a registration of all the qualified electors of such city.

Any municipality of less than sixteen thousand (16,000) population may, by ordinance, elect to become a registration municipality. When such ordinance is adopted the board of elections shall establish and maintain a registration of voters as in the case of registration cities. The board of elections, in a county containing a registration city, when it is deemed necessary to prevent fraud in elections, may require registration of voters in suburban municipalities, or territory contiguous or adjacent to such registration city. The board of elections of a county contiguous to a county containing a registration city, when it is deemed necessary to prevent fraud in elections, may require registration of voters in precincts adjoining registration of voter in precincts adjoining and contiguous to such adjoining county. The board of elections of any county may, by the vote of a majority of its members, establish and maintain registration of all the qualified electors of such county. In the event the members of the board of elections of a county shall divide equally upon the question of establishing and maintaining registration of the qualified electors of such county or a part thereof, as herein provided for, the clerk of such board shall notify the secretary of state of such tie vote, and the secretary of State shall thereupon cast the deciding vote. No person residing in any registration precinct shall be entitled to vote at any election, or to sign any declaration of candidacy, nominating, initiative, referendum or recall petition, unless he is duly registered as an elector in the manner provided herein.

It is clear therefore, that since the Constitution of the United States provides the qualifications of a member of Congress to be the qualifications of members of the Ohio House of Representatives, "The most numerous branch of the State Legislature," the provisions of the Ohio State Constitution and laws providing the details of qualifications of membership in "the most numerous branch of the Ohio State Legislatrue," become an integral part of the Federal Constitutional requirements as to the qualifications of a member of Congress. The Supreme Court of Ohio has surely drawn in question the validity of the foregoing statutes and Constitutional qualifications of a member of Congress; and has in substance declared them unconstitutional.

2. In addition, said Supreme Ohio court has ruled in this case in conflict with all its own applicable decisions,—State ex rel vs Addison, 132 O. S. 477, followed unanimously in Ohio; State ex rel Barret vs Leonard, 21 Ohio Opinions 355; State ex rel Latimer vs Leonard et al, 35 Ohio App. 158; Schorer vs Schirmer, 49 Ohio App. 103; Prentiss vs Dittmer, 93 O. S. 30; Mason vs The State ex rel McCoy, 58 O. S. 30. In fraud upon the appellant, Locke Miller, said court has so disregarded its own ruling as to constitute a flagrant violation of appellant's constitutional guarantee under the 14th amendment of Equal Protection of the Law. Appellant received some 9,000 votes unquestioned, uncontested, and undisputed. His opponent received no legal vote, because he was not a qualified elector in the State of Ohio; and is not now a qualified elector. The Court of Appeals of Mahoning County (R, page 5 Opinion, Case No. 32259, subpoenaed in this case) held,—

"Whether he will be able to vote in the May 2, 1950 Primary Election is not material."

And the Supreme Court of Ohio held, (154 O. S. 207) that Contestee's not being a qualified elector in Ohio is not the ground of an election contest!

3. The Code of Ohio provides a special procedure in election contest. In Section 4785 - 166 et seq. the due process of election contest is definitely and clearly stated; that election contests for district offices "shall be heard and determined by the chief justice, or a justice of the Supreme Court assigned by the chief justice" (4785 - 166); that "the person against whom the judgment is rendered may prosecute error by petition in error, within 20 days, to the Supreme Court of Ohio."

Appellants were denied this due process absolutely. In violation of all honor, in violation of law, in violation of the Constitutional guarantees of due process as described in appellants' Assignment of Errors, a full bench of the Supreme Court of Ohio heard and decided the case. The Supreme Court of Ohio has no original jurisdiction of election contest. It has only appellate jurisdiction.

It will be seen therefore, appellants were denied any appellate procedure whatsoever. Appellants are entirely without appellate procedure unless this appeal be allowed.

Cases sustaining jurisdiction: Cohen vs Virginia, 6 Wheaton 264 - 379; Caldwell vs Texas, 137 U. S. 692 - 697; Osborne vs Bank, 8 Wheaton 738 - 822 - 825; Murdock vs Memphis, 20 Wall (U. S.) 590 - 628; Bank Col. vs Oaklay, 4 Wheaton 235 - 244; Hurtado vs. Col., 110 U. S. 516 - 535.

The Supreme Court of Ohio has ruthlessly and flagrantly denied appellants their "rights and privileges . . . claimed under the Constitution" of the United States.

Now therefore, Section 237 of the Code of the United States provides, (paragraph B):

> (b) It shall be competent for the Supreme Court, by certiorari to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States, or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph.

C: QUESTIONS PRESENTED

The Questions Presented are:

1. Due Process of Law.

When the Supreme Court of Ohio has only appellate jurisdiction of the subject matter of this action; and the General Code, Section 4785 - 166 provides for the case to be heard and determined by a single Justice, either the Chief Justice, "or a Justice of the Supreme Court assigned by the Chief Justice;" and subsection 172 provides for Appellate Review by **the full** Supreme Court of Ohio,—the action of the Supreme Court in exercising original jurisdiction without appeal, is to deny Petitioner appellate procedure in Ohio. He is entirely without Appllate Procedure unless this writ be allowed.

In addition, Petitioner could get no relief for the frauds and perjuries described on pages 6,7, SUMMARY STATEMENT OF THE MATTER INVOLVED, in Petitioner's effort to subpoena witnesses and records and to cross-examine members of the Board of Elections. These things also constitute a total failure of Due Process.

2. Petitioner has been denied Equal Protection of the Law, contrary to the 14th Amendment, in that the Court below ruled in direct conflict to all of its own applicable decision, as cited page 11, STATEMENT OF GROUNDS OF JURISDICTION.

3. **The primary question** of law in this case is the **Qualifications of a Member of Congress** as prescribed in the **Constitution of the United States,** Article 1, Section 2, detailed in STATEMENT OF GROUNDS OF JURISDICTION supra. Said Sec-

tion of the Constitution requires the Qualifications of a Member of the National House of Representatives to be the same Qualifications as the requirements for Membership in "the most numerous Branch of the State Legislature" of Ohio. What the said requirements are, are detailed supra. It will be seen therefore, that Respondent is not qualified for membership in the National House of Representatives, **because he is not a Qualified Elector in Ohio.**

D: REASONS WHY THE WRIT SHOULD BE ALLOWED

It is indispensible to our system of government to maintain the **administration** and **opposition** of two or more Political Parties; and furthermore, the integrity of Political Parties.

The illegalities complained of herein constitute the typical technique of bi-partisan machine politics in Ohio. Petitioner seeks only enforcement and respect for the Election Act of Ohio, the Due Process guaranteed by the Constitutions of Ohio and of the United States, and asks that the Courts of Ohio be compelled to respect the Constitution of the United States.

Bi-partisan machine politics in Ohio can succeed only upon the basis of criminal privilege. Petitioner asks that said machine politics be given no such criminal privilege. But Petitioner asks this Court to encourage Petitioner's fight for clean politics in Ohio by the protections of the Constitution of the United States, Due Process of Law, Equal Protection of the Law, and respect for our Constitutional system of Government.

LOCKE MILLER,
Petitioner.

CERTIFICATE OF GOOD FAITH

I, Locke Miller, petitioner herein, do hereby certify that the filing of this petition for a Writ of Certiorari is filed in good faith and not for purpose of delay.

LOCKE MILLER,
Petitioner.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

OPINION OF THE COURT BELOW

The case below is reported in the manner of cases reported in the Supreme Court of Ohio, 154 Ohio St. 207, attached and transmitted herewith marked Petitioner's exhibit .....

The opinion of the Court of Apeals in case No. 32259 in the Supreme Court of Ohio, which was subpoenaed with the entire record of said case and made a part of the record of this case No. 32275, is also attached and transmitted herewith and marked Petitioner's exhibit .....

II

JURISDICTION

1. The Federal jurisdiction of this case is completely stated in the Petition, B: STATEMENT OF GROUNDS OF JURISDICTION.

2. The date of the final judgment to be reviewed here, was August 23, 1950. See Petitioner's exhibit ....., 154 Ohio St. 207.

3. The facts are all set out in the Petition and "Summary Statement of Matter Involved," Pages 2 to 7 inclusive, Petition herein.

4. The Petition herein is filed on ..... day of October, 1950.

5. Cases sustaining jurisdiction are abundantly cited in "Statement of Grounds of Jurisdiction", page 12, Petition.

III

STATEMENT OF CASE

The pertinent facts are all admitted in Respondent's Answer in the Supreme Court of Ohio, namely, that while living in **Youngstown,** Precinct N, 5th Ward, on January 5, 1950, Respondent filed Declaration of Candidacy for Precinct Committeeman in **Canfield,** as the Court found (page 4, Appellate Opp.) making a false affidavit of residence in **Canfield.** This was pursuant to machine-politics design for control by fraud. Emboldened by said criminal venture, Respondent, in like manner on January 18, made Declaration of Candidacy for the office of Representative to Congress, with the same false affidavit, **repeated now this second time.** Still living in Youngs-

town on January 25, Conspirators made criminal registration of Respondent in the Canfield Precinct in criminal violation of Section 4785 - 201 entitled "False Registration", - **3rd false affidavit.** The Court found, page 4, Appellate Opp., and in "Answer to Interrogatory 10", that Respondent **never** lived in Canfield!

By said frauds, Respondent got himself off the poll book where he actually lived, in Youngstown. In Canfield, where he is on the poll book, he had no place to live, and did not live there. Consequently, **there is no point where he may legally vote.**

IV

QUESTIONS PRESENTED

The questions presented therefore may be summed up by saying that there were two candidates for the Republican nomination for Congress from the 19th District of Ohio,—the Petitioner, a qualified elector; Respondent, not a qualified elector. Shall the Federal Constitutional requirements, that a member of Congress be a qualified elector, be respected?

Furthermore, shall the Federal guarantees of Due Process of Law and Equal Protection of the Law be respected in the adjudication of these matters?

V

ASSIGNMENT OF ERRORS

Therefore Petitioner assigns the following errors in the record and proceedings in the said case:

1. Contestors were aggrieved by a **total failure of Due Process of Law,** and were reduced to a single

trial without any appeal whatsoever in Ohio as provided by law. Contestors were denied the due process provided by Ohio General Code, Section 4785 - 166, entitled Contest of Election, and Section 4785 - 172, entitled Appeal to the Supreme Court; which provides that election contests for district offices "shall be heard and determined by the chief justice, or a justice of the Supreme Court assigned by the chief justice." Subsection 172 provides "the person against whom the judgment is rendered may prosecute error by petition in error, within 20 days, to the Supreme Court of Ohio."

This case was not heard by this due process in any decree whatsoever. Upon inquiry by Petitioner, Clerk of the Supreme Court of Ohio wired August 15, after verbal agreement had been entered providing otherwise, "Case 32275 will be heard by Chief Justice alone." Upon filing of an Affidavit of Prejudice against the said chief justice, Carl V. Weygandt, instead of his assigning said cause to "a justice of the Supreme Court assigned by the chief justice;" (Section 4785 - 166),—the case was heard as reported 154 O. S. 207 **by full bench,** althought "Stewart, Turner and Taft, JJ., not participating."

The Supreme Court of Ohio **has no original jurisdiction of election contest.** It has only appellate jurisdiction.

It will be seen therefore, Contestors were denied any appellate procedure whatsoever in Ohio; all in violation of the special statutory provisions of due process referred to above. **Contestors are totally without appellate procedure unless this writ be allowed.**

2. The Supreme Court of Ohio, hearing this case as aforesaid in violation of law, erred in their conclusion of law by holding (154 O. S. 207) that the averments in contestors' petition of contestee's not being a qualified candidate by reason of **his not being a qualified elector,**—is not proper ground of election contest! In view of the fact that Petitioner, Locke Miller, was the only legally qualified candidate in the primary election of May 2, 1950, for the office of Republican nomination for Congress in the 19th District, and received some 9,000 votes therefor, uncontested, unquestioned and undisputed, he is the legal nominee of the Republican Party.

Both the Constitution of the United States and the Constitution of Ohio as stated in detail in appellant's accompanying Statement of Grounds of Jurisdiction, **require that the contestee be a qualified elector.** By his own fraud and perjury and illegal maneuvering to accomplish fraudulent objectives of machine politics in Ohio, **contestee has ceased to be a qualified elector in Ohio.**

3. The Supreme Court of Ohio erred, while as aforesaid hearing the above-entitled cause without any jurisdiction to hear the same, denied to the appellants equal protection of the law guaranteed by the Constitution of the United States by ruling in this matter **contrary to all their own applicable decisions.** (As cited in accompanying Statement of Grounds of Jurisdiction.)

4. The Supreme Court of Ohio erred in that it was wholly disregardful of, and ruled in direct conflict with Article 5, Section 1, of the Constitution of the State of Ohio, entitled "Who may vote," in that the said provisions of the Constitution provide that

a qualified elector must live in the various political subdivisions **"such time as may be provided by law."**

Since Section 4785 - 30 of the General Code requires a qualified elector to have **forty days residence in the precinct** in which he claims voting right, the holding of the Supreme Court of Ohio is in direct conflict with this Constitutional provision.

5. The Supreme Court of Ohio erred in that it was wholly disregardful of, and ruled in direct conflict with Article XV, Section 4, of the Constitution of the State of Ohio, entitled "Who eligible to hold office," in that said provisions of the Constitution provide that all public officials in Ohio **must be qualified electors.**

6. The Supreme Court of Ohio erred in that it was wholly disregardful of and in conflict with each and every provision of the **Registration laws of Ohio** including Section 4785 - 30 - 31 - 34 etc. The general effect of all these errors has been, without using the terms, to declare the provisions of the registration laws unconstitutional. Inasmuch as all the Ohio Courts have uniformly held that the Legislature is fully empowered under the Constitution to enact the provisions of the registration laws, the decisions of which Petitioner complains, are in direct conflict with the foregoing provisions of the Constitution of Ohio and the Constitution of the United States.

7. In disregarding the foregoing provisions of the law and Constitution of Ohio, which provide the essential qualifications for membership in the Ohio State Legislature, "The most numerous branch of the State Legislature,"—the Supreme Court of Ohio erred in that it was totally disregardful of, and in conflict with the Constitution of the United States, Article I,

Section 2, which provides that a member of the National House of Representatives "shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

VI

ARGUMENT

The opinion of the Supreme Court of Ohio in this case, if it amounts to anything, amounts to saying that Respondent's **not being a qualified elector** in Ohio, and having committed repeated perjuries, and other criminal violations of the Election Act,—do not constitute the grounds of Election Contest!

It is Petitioner's contention that the Federal Constitutional requirements of qualification for the National House of Representatives, **constitute the primary ground** of Election Contest. It is Petitioner's contention that when there are but two candidates, one of them, as the Petitioner, a qualified elector, and the other not; and, as in this case, the petitioner with 9,000 votes uncontested, unchallenged and unquestioned, that the **Petitioner is the legal nominee of the Republican Party.**

If the qualifications of the candidate be not ground of contest, then for aught the Contest of Election Law could do, Churchill, Stalin or Mao could be Congressman from the 19th District of Ohio. But they may not be! for the reason they are not qualified electors of Ohio. Neither is the Respondent!

The truth is that machine politics so dominates the Courts of Ohio, that in order to perpetuate the vicious system, the Law and the Constitution must be made a dead letter. And this Petitioner has been

deliberately defrauded by denial of Due Process and Equal Protection of the Law by those who know that, should he triumph in Ohio politics, the reign of fascistic, subversive political corruption will come to an end.

That this case, on the record, was a case arising under the constitution, and the laws of the United States as well as the laws of Ohio, (4785 - 166, etc. Gen. Code, Ohio p. 29 et se. Appendix) guaranteeing and constituting due process is clear from the following cases.

6 Wheaton 264, 379 **Cohen vs. Va.**

"A case arises under the constitution or laws of the United States, when its correct decision depends upon the construction of either. See also Osborne vs. Bk. 8 Wheat. 738, 822, 825.

Caldwell vs. Tex. 137, U. S. 692, 697.

"Law in its regular course of administration through courts of justice, is due process, and when secured by the laws of the State, the constitutional requisition is satisfied. 2 Kent laws 13. And Due process is so secured by laws operating for all alike, and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice. **Bank Col. vs. Oaklay,** 4 Wheat 235, 244. The power of the state must be exerted within the limits of these principles and its exertion cannot be sustained when special, partial, and arbitrary. **Hurtado vs. Col.** 110, U. S. 516, 535."

20 Wall (U.S.) 590, 628, **Murdock vs. Memphis.**

"If it appears from the record that the plaintiff in error presented to the Court** by appropriate method, one of the questions specified in the statute, and the court ruled against him, the jurisdiction of this Court attached, and we must hear the case on its merits."

"These merits have been held to be, to determine whether the propositions of law involved in the specific federal question were rightly decided, and if not, did the case of the plaintiff in error on the pleadings and evidence, come within the principle ruled by this Court. This has always been held to be the exercise of the jurisdiction, and re-examination of the case provided by the statute."

It is the settled law in Ohio, and not overruled, that statutes relating to the right and ability to hold office reach back to the question of eligibility to become a candidate for that office. That must be the effect of the words which follow.

Prentiss vs. Dittmer, 93 O. S. 314.

"1. An offer by a candidate for common pleas judge, made for the purpose of effecting his election to office, that in the event of his election he will accept for his judicial services only the stipulated salary payable by the state, and that he will accept nothing that may be due and payable to him from the local or county treasury, is against public policy and an offense within the preview of Section 5176-26 General Code, which, if proven, invalidates his election.

"2. By virtue of that section, such an offense may be set forth has a ground of contest within

the terms of Section 5138, General Code, **and it is not necessary to prove, in such election contest based on that sole ground, that a sufficient number of voters were so influenced by such offer as to change the election results.**

"4. Elections and election contests are controlled by specific sections of the Ohio constitution. The grant of legislative power for their control is absolute, and under such provisions the legislature had full power to and did impose conditions under which elections might be invalidated; **and where the proceeding is one involving a contested election, a prior conviction of the offenses named in Section 5175-26, General Code, is not required as a condition precedent to such invalidation."**

Jones delivering the opinion of the Court quotes as a leading authority, **"Mason vs. The State Ex Rel. McCoy,"** 58 O. S., 30, and the following particular language of Judge Spear at Page 52 of "Mason vs. The State":

"A question much discussed is as to whether the state should be treated as imposing a **test of eligibility,** or as providing a method of removal. The matter may be not free from doubt. Possibly the provision involves both characteristics. But the better conclusion, we think, is that the intent of the legislature was, not to provide a method by which a person lawfully elected to an office may be removed therefrom, but rather a method by which the title of one to an office which he has obtained possession of in violation of the terms of the statute upon which his claimed right rests, may be inquired into. **It is, therefore, a challenge**

to the title to the office, resting upon charges of misconduct in procuring it, rather than a process to remove, resting upon charges of misconduct in office."

And **"State Ex Rel, Bill vs. Etling, 29** Kansas, 397."

In that case, the opinion was written by Justice Brewer, afterwards a member of the Supreme Court of the United States. And he says therein:

> "The theory of popular government is that the most worthy should hold the offices. Personal fitness—and in that is included moral character, intellectual ability, social standing, habits of life, and political convictions—is the single test which the law will recognize. **That which throws other considerations into the scale,** and to that extent tends to weaken the power of personal fitness, should not be tolerated. **It tends to turn away the thought of voter from the one question which should be paramount in his mind when he deposits his ballot.** It is in spirit at least, bribery, more insidious, and therefore more dangerous, than the grosser form of directly offering money to the voter."

It is thus clear that the Jurisdiction of This Court has attached, and Petitioner is entitled to a Writ of Certiorari herein, and a hearing on the merits that, upon a final hearing on the merits, his rights under the constitution and laws may be adequately safeguarded.

LOCKE MILLER,
Petitioner.

No.....

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

LOCKE MILLER,
Petitioner,

vs.

HENRY P. KOSLING,
Respondent.

APPENDIX

SECTIONS OF GENERAL CODE OF OHIO

Section 475-166. Contest of Election.

"The nomination or election of any person to any public office or party position, or the approval or rejection of any issue or question, submitted to the voters, may be contested by qualified electors of the state, county or political subdivision, as the case may be, upon the terms and conditions as hereinafter provided. a. In the case of an office to be filled, or an issue to be determined by the voters of the entire state, or

for the offices of members of the Congress of the United States, or for judicial offices higher than that of court of common pleas, or for an office to be filled, or an issue to be determined, by the voters of a district larger than a county, said contest shall be heard and determined by the chief justice, or a justice of the supreme court assigned for that purpose by the chief justice; except that in a contest for the office of chief justice of the supreme court, such contest shall be heard by a justice of such court designated by the governor. b. In the case of all other offices or issues, except judicial offices, such contests shall be heard and determined by a judge of the court of common pleas of the county in which the contest arose. In the case of a contest for a judicial office within a county such contest shall be heard by the court of appeals of the district in which such county is located. If any contestant shall allege prejudice on the part of the judges of the law to hear such appeal, then the chief justice of law to hear such apeal, then the chief justice of the supreme court, upon application of any such contestant and for good cause shown, may assign a judge or judges from another court to hear such contest."

(113 v. 307, Sec. 166. Eff. Jan. 1, 1930.)

Section 4785-172. Appeal to Supreme Court.

"The person against whom the judgment is rendered may prosecute error by petition in error, within twenty days, to the supreme court of Ohio; but such error proceedings shall not supersede the execution of the judgment of the court. Such error proceedings shall take precedence over all

other causes upon the calendar, and shall be set down for hearing and determination at the earliest convenient date. The laws and rules of the court governing error proceedings shall apply in the judgment of the lower court be affirmed, the supreme court shall order the judgment of such lower court to be enforced, if the party against whom the judgment is rendered is in possession of the office." (113 v. 307, Sec. 172. Eff. Jan. 1, 1930.)

Art. V, Section 1. Constitution of Ohio.

Who may vote. Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections.

Art. I, Section 2. Constitution of the United States.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.